

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





4  
75-2586 B Pl

To be argued by  
JONATHAN J. SILBERMANN

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA  
ex rel. WILLIAM PUTMON,

Appellant,

-against-

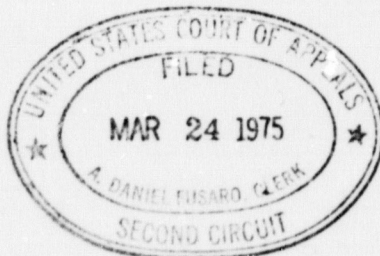
ROBERT J. HENDERSON,  
Superintendent,  
Auburn Correctional Facility,

Appellee.

Docket No. 75-2586

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER  
OF THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK  
DENYING A WRIT OF HABEAS CORPUS



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

JONATHAN J. SILBERMANN,  
Of Counsel

**PAGINATION AS IN ORIGINAL COPY**



## CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

C. Form No. 106 Rev.

Civ-1973-372

## TITLE OF CASE

## ATTORNEYS

United States ex rel WILLIAM PUTMON

For plaintiff: pro se #64189

vs

135 State St  
Auburn, N.Y. 13021ROBERT J. HENDERSON, Superintendent,  
Auburn Correctional Facility

Assigned Counsel:

Ronald S. Carlisi

300 Wilder Bldg.

Rochester, N.Y. 14614

For defendant:

Louis J. Lefkowitz, Esq.

Attorney General State of New York

## STATISTICAL RECORD

## COSTS

## DATE

NAME OR  
RECEIPT NO.

## REC.

## DISB.

L. 5 mailed

Clerk

L. 6 mailed

Marshal

sis of Action:

Docket fee

beas Corpus

Witness fees

tion arose at:

Depositions

ONLY COPY AVAILABLE

## Civ-1973-372 US ex rel WILLIAM PUTMON vs ROBERT J. HENDERSON, Superintendent, etc

DATE 1973	PROCEEDINGS	Date Ord Judgment
July 23	Filed Petition	
23	Filed Order allowing filing in forma pauperis: that respondent show cause why a writ of habeas corpus should not issue and to produce certain stated records ret. 9/24/73. Burke DJ.	
	Notices to petr. & Lefkowitz	F-14
23	JS 5 made	
Dec. 14	Filed Findings of Fact & Conclusion of Law denying petr. application for writ of habeas corpus & Cert. of probable cause, permission to appeal in forma pauperis is denied with qualification that petr. may file with the Clerk notice of appeal w/o payment of filing fees-Burke, DJ Notice & copies to petr. & Louis Lefkowitz	F-14
14	JS 6 made	
1974		
Jan. 11	Filed Petitioner's Notice of Appeal (copy mailed to Mr. Lefkowitz, Bflo., and to Clerk, CCA with copy of docket entries)	
Feb. 19	File sent to U.S. Court of Appeals	
June 27	File returned from U.S. Ct. of Appeals	
27	Filed certified copy of order of CCA granting petitioner's motion to proceed in forma pauperis, etc. to the extent that the case is remanded to the District Court for hearing to determine whether petitioner was competent at the time of his guilty plea and directing the District Court to assign counsel	
27	JS 5 made	
July 1	Filed Order that hearing be held 7/22/74 to determine whether petitioner was competent at time of guilty plea, assigning Ronald S. Carlisi as counsel, and directing respondent to produce petitioner in person at hearing-Burke, DJ (notice to petr. and Messrs. Carlisi and Lefkowitz, Bflo.	F-15
1	" CJA 20, Copy 5, Appointment for Counseling Services (orig. & 2 cys. mailed to Ronald S. Carlisi, Esq. and Copy 4 to Adm. Ofc.)	
Sept. 9	Evidentiary hearing. To be finally submitted 5 wks from today.	
Oct. 29	Filed transcript of proceedings of 9-9-74.	
Nov. 19	Filed Findings of Fact that petitioner was mentally competent at the entry of his guilty plea-Burke, DJ Notice & copies to Ronald Carlisi & Louis J. Lefkowitz	F-15
26	" CJA 21, Copy 5, Authorization for Expert Service (Copy 4 mailed to Administrative Office)	
26	" CJA 21, Copy 2, Voucher for Expert Service (Copy 1 mailed to Adm. Ofc. and Copy 3 returned to Mr. Carlisi)	
19	JS 6 made	
27	Filed at Roch. Petitioner's Notice of Appeal (copy mailed to Mr. Lefkowitz, Bflo. and to Clerk, CCA with copy of docket entries and copy of CJA 20; CCA's Forms C and D mailed to Mr. Carlisi)	



STATE OF NEW YORK

COUNTY COURT

36-102  
10/7 200  
COUNTY OF MONROE

1 THE PEOPLE OF THE STATE OF NEW YORK

2 -vs-

3 WILLIAM PUTMON,

4 Defendant.

5 -----  
6 OCTOBER 19, 1971

HALL OF JUSTICE, ROCHESTER, NEW YORK

7 PRESIDING:

HON. JOHN J. CONWAY, JR., Monroe County  
Court Judge.

8 APPEARANCES:

9 JACK B. LAZARUS, ESQ., Monroe County  
District Attorney. appearing on behalf  
10 of the People of the State of New York,  
by ROBERT AVERY, ESQ., Assistant  
11 District Attorney, of counsel.

12 The defendant in person and by his  
attorney. JOHN CALLAGHAN, ESQ.

13 PLEA

14 MR. AVERY: William Putmon.

15 Are you William Putmon?

16 DEFT. PUTMON: Yes.

17 MR. AVERY: Do you appear with and are you represented by  
18 Mr. Callaghan this morning?

19 DEFT. PUTMON: Yes.

20 THE COURT: This is the indictment which is on my  
21 calendar. I'm referring to Indictment #347.

22 On a prior occasion. the court had started to  
23

1           inquire of the defendant as to the circumstances of the  
2           charge and what he was pleading guilty to. The court  
3           deems it to be appropriate to start over again rather  
4           than to attempt to pick it up in the middle where we  
5           left off.

6                     William Putmon. I advise you that the court  
7           can't accept a plea of guilty to any crime unless the  
8           court is satisfied that the plea is voluntary on your  
9           part, that nobody is forcing you to do it, unless you  
10          understand the nature of it, the possible consequences  
11          of it. Now, I tell you that in pleading guilty, it's  
12          the same as if you are convicted by a jury after a trial.  
13          In pleading guilty, you are, in effect, testifying  
14          against yourself when the constitution protects you  
15          from being forced to do that. That's why we have to  
16          make sure that the plea is voluntary on your part.

17                    Now I ask you what your recollection is as to  
18          the date when this occurred; do you remember the date?

19   DEFT. PUTMON:    I believe it was May 11th.

20   THE COURT:       Has anybody threatened you in any way to cause  
21                    you to plead guilty?

22   DEFT. PUTMON:    No.

23   THE COURT:       Has anybody made any promise to you that he



1           knew what sentence the court would impose if you did  
2           plead guilty?

3   DEFT. PUTMON:     No.

4   THE COURT:        The court is apprised that the district  
5           attorney has previously made a recommendation --

6   MR. AVERY:        I understand this has been made and I will  
7           recommend it again, your Honor.

8   THE COURT:        -- that the defendant be permitted to plead  
9           to Attempted Rape in the First Degree?

10   MR. AVERY:       That's correct, your Honor.

11   THE COURT:        I tell you, William. that Attempted Rape in  
12           the First Degree is what we call a Class C felony. It  
13           carries with it a possible maximum sentence of up to  
14           fifteen years. The crime of which you are indicted is  
15           Rape in the First Degree which carries a possible  
16           maximum sentence of twenty-five years.

17                   Now, I tell you that the district attorney has  
18           recommended that you be permitted to plead to a reduced  
19           charge to Attempted Rape in the First Degree. You have  
20           talked this over with your attorney, Mr. Callaghan?

21   DEFT. PUTMON:     Yes.

22   THE COURT:        I know of numerous occasions. Are you  
23           satisfied with Mr. Callaghan as your attorney?

1 DEFT. PUTMON: Yes.

2 THE COURT: Where did this happen, William?

3 DEFT. PUTMON: Off of Clinton Avenue.

4 THE COURT: Do you remember the name of the street; was  
5 it just a side street?

6 DEFT. PUTMON: Yes.

7 THE COURT: What time of day was it?

8 DEFT. PUTMON: About twelve, twelve o'clock.

9 THE COURT: You mean noon or midnight?

10 DEFT. PUTMON: Yes.

11 THE COURT: Broad daylight?

12 DEFT. PUTMON: Yes.

13 THE COURT: Where had you been?

14 DEFT. PUTMON: Well, I went for a job at the time.

15 THE COURT: Whose automobile were you driving?

16 DEFT. PUTMON: My father's.

17 THE COURT: If I tell you that this is indicated to have  
18 occurred on Requa, does that sound familiar?

19 DEFT. PUTMON: Yes.

20 THE COURT: How did you happen to be on that street?

21 DEFT. PUTMON: Well, I was coming down Clinton Avenue and I  
22 turned off down on this street.

23 THE COURT: Where did you go?



1 DEFT. PUTMON: I was going over to the lumber factory.  
2 THE COURT: What caused you to stop?  
3 DEFT. PUTMON: Well, to check out the job over there at the  
4 lumber factory.  
5 THE COURT: What happened after that?  
6 DEFT. PUTMON: Well, I went into this house.  
7 THE COURT: How did you happen to go into the house?  
8 DEFT. PUTMON: Well, the door was open.  
9 THE COURT: How did you happen to pick out this house?  
10 DEFT. PUTMON: Well, I seen the lady outside washing the car.  
11 THE COURT: She was washing the car?  
12 DEFT. PUTMON: Yes.  
13 THE COURT: And, then, what did you do?  
14 DEFT. PUTMON: I went inside the house.  
15 THE COURT: After you went inside the house, what did you  
16 do?  
17 DEFT. PUTMON: Well, I looked around to pick up a watch and  
18 radio.  
19 THE COURT: What did you do with the lady?  
20 DEFT. PUTMON: She was outside and, then, she came inside.  
21 THE COURT: And, then, what happened?  
22 DEFT. PUTMON: We started talking.  
23 THE COURT: And, well go ahead. Tell me what happened

1 from then on?

2 DEFT. PUTMON: We started talking and then we went upstairs  
3 in the bedroom. I believe we had a relationship upstairs.  
4 Then, I left.

5 THE COURT: What else? Did you indicate you took some-  
6 thing out of the house?

7 DEFT. PUTMON: Yes.

8 THE COURT: What was it?

9 DEFT. PUTMON: A radio, a watch and two Kennedy fifty-cent  
10 pieces.

11 THE COURT: You still had all those things when the  
12 police found you?

13 DEFT. PUTMON: Yes; when they came to my home.

14 THE COURT: Counselor, is there any question in your  
15 mind about the propriety of this plea?

16 MR. CALLAGHAN: There is not, your Honor.

17 THE COURT: The record will indicate that the court has  
18 had access to the previous multiple psychiatric evalua-  
19 tions of the defendant and the court finds that the  
20 defendant is capable of understanding the charge against  
21 him, in cooperating in his defense and, further under-  
22 standing the nature and consequences of this plea.

23 I ask you now, William Putmon, how do you



1           plead to the felony of attempt to commit the crime of  
2           Rape in the First Degree in satisfaction of the multiple  
3           charges in the indictment?

4   DEFT. PUTMON:     Guilty.

5   THE COURT:        Counselor, what day would you suggest for  
6           sentencing?

7   MR. CALLAGHAN:    The situation is, of course, as the court is  
8           aware, that Judge Ogden also has some matter to dispose  
9           of with regard to Mr. Putmon. I would suggest tomorrow  
10          if Judge Ogden is available.

11   THE COURT:        I'll adjourn both cases, then, to tomorrow,  
12          October 20th.

13                    The recommendation of the district attorney  
14           is approved and the plea is accepted in satisfaction of  
15           the indictment.

16   MR. CALLAGHAN:    Thank you, Judge.

17                               \* \* \* \* \*

18  
19   REPORTED BY:

20   William A. May, C.S.R.  
21   County Court Reporter  
22  
23

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

United States ex rel WILLIAM PUTMON

- vs -

CIVIL 1973-372

ROBERT J. HENDERSON, Superintendent,  
Auburn Correctional Facility

---

Ronald S. Carlisi  
300 Wilder Building  
Rochester, N.Y. 14614  
Attorney for petitioner

Bedros Odian  
Assistant Attorney General of New York  
65 Court Street  
Buffalo, N.Y. 14202  
Attorney for respondent

FINDINGS OF FACT

1. By order filed June 26, 1974 the Court of Appeals for the Second Circuit "Ordered that said motion be and it hereby is granted to the extent that the case is remanded to the District Court for a hearing to determine whether Petitioner was competent at the time of his guilty plea. The District Court is further directed to assign counsel for the purpose of presenting the issue to it."
2. By order of this court dated June 28, 1974, this court "Ordered that a hearing will be held before this



court at the United States Court House, Rochester, New York, on July 22, 1974 at 12:00 noon to determine whether petitioner was competent at the time of the guilty plea. I hereby assign as counsel for the petitioner, for the purpose of presenting the issue to this court, Ronald S. Carlisi, 300 Wilder Building, Rochester, New York 14614. The respondent is hereby directed to produce William Putmon, the petitioner, in person at the hearing. The District Attorney of Monroe County is invited to participate in the hearing." After adjournment from the original date scheduled for the hearing, the hearing was held before this court on September 9, 1974 at which time he appeared in person and represented by his assigned counsel Ronald S. Carlisi. The respondent was represented at the hearing by Bedros Odian, Assistant Attorney General of New York. Melvin Bressler, Assistant District Attorney of Monroe County attended the hearing but did not participate in the hearing.

3. Dr. Stephen Dvorin was called as a witness by the petitioner. In May of 1971 he was employed as a Resident in Psychiatry at the University of Rochester and Strong Memorial Hospital on an assignment in the court's clinic at the time. On May 18, 1971 and May 19, 1971, he

made an examination of the petitioner for the purpose of determining whether or not he was competent to stand trial. He himself examined the patient on May 18, 1971 and again on the following day he and a Dr. David Mactye examined the patient on May 19, 1971. He filed a written report and found that the petitioner was incompetent at the time of his examination. As a result of the report the defendant was transferred to Rochester State Hospital. On the occasion of Dr. Dvorin's examination by Dr. Dvorin alone on May 18, 1971, he spent about an hour with the petitioner. This examination took place in the Monroe County Public Safety Building in the jail. On the following day he examined him together with Dr. Mactye from 30 to 45 minutes.

4. Dr. Felice Iapaola was called as a witness for the petitioner. He is a qualified psychiatrist and in May of 1971 was Chief of Unit B at Rochester State Hospital. He examined and evaluated the petitioner who had been admitted to Unit B at the Rochester State Hospital. He was then transferred to the Ward 4-E, Medical-Surgical Building. The purpose of the examination was to determine if the petitioner was competent to stand trial. When the petitioner was first admitted to the State Hospital he was



in Unit B which was a minimum security section. The petitioner was transferred to Ward 4 East which was a new unit at the Rochester State Hospital and was intended for all court cases. The significance that Ward 4 East was considered a maximum security ward has no pertinence except that the petitioner was a court case. The petitioner spent a few days in Unit B of the hospital, a minimum security place. Dr. Iapaolo testified that the petitioner was very cooperative and accepted the rules and regulations of the ward and has followed them without argument and had adjusted very well to the new environment. On May 27, 1971 he was transferred to Ward 4 East. Upon his transfer to Ward 4 East he started to feel tense and started to argue and made such remarks, "I would prefer to be in jail than over here. It is much better to be in jail for a few years than to be in the State Hospital for a few weeks". The procedure in Ward 4 at that time was for the Chief of the Unit to see the patient and, with the help of the social worker and psychologist, to get all information and all tests and to discuss the case almost daily, with the help of a shift of nurses and each morning the Chief of the Unit gets information about behavior of the patient and how the patient was relating to the nurses and other

patients. The staff nurse would see the patient every day around the clock and then the Chief of the Unit would talk to the staff nurse and get her report of how the patient was doing and how he was acting. During the period that the petitioner was in the Rochester State Hospital he was seen by Dr. Iapaolo two or three times over a period from May 25, 1971 to June 24, 1971.

Dr. Iapaolo filed a written report shortly after June 24, 1971 in which he reported, "As a result of our examination, we believe with reasonable medical certainty that this patient, at the time of our examination, was not in such a state of insanity as not to be aware of the nature of the charges against him, to understand the proceedings, and to aid in his defense. He does not require further observation or treatment in this hospital and should be removed at any time."

5. The examination and report of Dr. Iapaolo was made in connection with a charge of burglary then pending before Monroe County Judge Ogden. Dr. Iapaolo did not know of another pending charge of attempted rape against the petitioner which was pending before Monroe County Judge Conway. The petitioner had been arraigned on the burglary charge before Judge Ogden on September 30,



1970 and was represented on that charge by retained counsel. He was arraigned on the rape charge before Judge Conway on June 25, 1971. The same retained counsel who represented the petitioner on the burglary charge also represented him at his arraignment on the rape charge on June 25, 1971, and continued to represent him on both charges. He entered his guilty plea on October 19, 1971 with his retained counsel representing him. Extensive colloquy took place between the court regarding the events which formed the basis of the charge against him.


6. On August 20, 1971, he had been officially declared competent to stand trial on the burglary charge before Judge Ogden and did go to trial. At the sentencing before Judge Conway, the Judge referred to the reports before Judge Ogden, and said he had access to those reports.

7. At the sentencing with retained counsel present before Judge Conway on the rape charge, there was no claim of mental incompetency, nor was there any request for a mental examination.

8. I find that at the sentencing Judge Conway pointed out to the petitioner that the record indicated that the court had had access to the previous multiple psychiatric evaluations of the petitioner and the court

then found that the petitioner was capable of understanding the charge against him, was capable of understanding the nature and consequences of his guilty plea. I also expressly so find here.

9. I find the petitioner at the entry of his guilty plea was mentally competent, that he had sufficient ability to consult with his retained lawyer and did understand the proceedings against him and that he understood the nature and consequences of his guilty plea.



HAROLD P. BURKE  
United States District Judge

November 18, 1974.



MONROE COUNTY MENTAL HEALTH CLINIC  
FOR COURTS AND EDUCATION DEPARTMENTS  
HALL OF JUSTICE -- ROOM M-142  
CIVIC CENTER PLAZA  
ROCHESTER, NEW YORK 14614

CONFIDENTIAL

May 20, 1971

Judge of County Court  
Hall of Justice  
Civic Center Plaza  
Rochester, New York 14614

Re: William Putmon  
15 Hoeltzer St.  
d.o.b. 10-31-51  
Charge: Burglary 3 & P.L.

Honorable Sir;

At your request I examined William Putmon in the Monroe County Public Safety Building and the Jail by myself on May 18, 1971 and with Dr. David Mactye on May 19, 1971 in regard to his ability to understand the charges against him and to participate in his defense.

Mr. Putmon is a 19 year old single black male who is charged with Burglary 3rd and Petit Larceny. According to our records he has a long history of court contacts and incarceration in penal institutions, and he has been shown through psychological testing to be in the mentally defective range. On the two occasions that I saw him in jail he gave widely differing stories about the reasons for his arrest. He was unable to clearly state why he had been brought to jail, and he did not know what were the charges against him. As we inquired about the possible consequences of his current predicament he initially could not respond but later began to talk about believing in God and the Bible, somewhat inappropriately. As the interview progressed and we began to ask more structured types of questions the defendant became increasingly agitated, confused and upset. On some occasions he forgot what questions were being asked. He engaged with the interviewers in a rather distant fashion, constantly staring at the wall with almost no direct eye contact with the interviewers. When asked about this he told us that the wall looked very weird, but he was unable to clarify that perception. He spoke in simple, monosyllabic words in a poorly organized fashion, but we were always able to follow the sequence of his statements. His memory for recent and past events was impaired; he was able to do simple calculations; he was not able to concentrate well on the task at hand; his intellectual capacities were to be consistent with those reported in psychologic testing. He reports his inability to concentrate and his feelings of being mixed up are related to his preoccupation with his father's death, his mother's illness, and the recent birth of his child. He mentions also that he thinks at length about death but that he has no specific plan at this time. He adds that some times he finds himself engaged in strange behaviors without understanding how or why they were initiated.

Impressions and recommendations: This man presents himself as a confused and bewildered person who lacks clear understanding of the charges against him, the current Court proceedings, and the possible consequences of his alleged behavior. He is unable to sufficiently concentrate on the task at hand so as to be able to assist in his defense and as he is directly questioned he becomes increasingly anxious, confused, and pressured. My conclusion, therefore, is that he is not competent to proceed in his trial because he cannot understand the charges against him and he is not able to assist in his defense.

I might add that there are certain qualities of his presentation which suggest to me a feigned ignorance. However, I am not able at this time to differentiate this putting on quality from a genuine inability to comprehend his current circumstances. In any event, at this particular time he is clearly not competent to go ahead with his court proceedings.

Please feel free to contact me if there are any questions about the above material or if I can be of any further assistance.

Sincerely,

Stephen Dvorin, M.D.

David J. Barry, M.D.  
Acting Director

SD:rb

c.c. Probation Department



## HISTORY OF PATIENT

(Doctor's Notes)

## ROCHESTER STATE HOSPITAL

NAME OF PATIENT:

PUTMON, William

IDENTIFICATION NO.:

118 84 36

HOSPITAL NO.:

056 954

Mr. William Putmon was admitted to the Rochester State Hospital on May 25, 1971, charged with Third Degree Burglary and Petty Larceny, and has been examined by two qualified psychiatrists on various occasions since his admission.

A history was obtained from the patient and also from his mother. Mental status examination, physical examination, psychodiagnostic tests, and laboratory tests have been completed. An E.E.G. was done at the Strong Memorial Hospital.

On the floor, the patient has been very cooperative. He has accepted the rules and regulations on the ward and has followed them without argument and has adjusted very well to the new environment.

On May 27, 1971, the patient was transferred to Ward 4 East, the maximum security ward, because of the new disposition of Criminal Orders in the hospital. Since then, the patient gradually started to feel tense, started to argue, and has made remarks such as: "I would prefer to be in jail than over here. It is much better to be in jail for a few years than to be in the State Hospital for a few weeks."

The patient dresses nicely. He takes care of his personal hygiene. He is very active in physical exercising and sleeps very well.

In reviewing his past history, the patient claimed that for the last six months, he has been depressed and at times, tense. He claims that he has been under pressure since his father's death, about five months ago. In 1967, he was sent to Elmira Reformatory for three years, for car theft, and left there in 1970. About a month after his release, he was arrested for Burglary, but the charges were later dropped. He has been living with his girlfriend, who had a baby on May 9, 1971. He claimed that the combination of his arrest, the fact that his girlfriend just had a baby, and his father's death made him feel depressed. That is the reason why he had thoughts of harming himself in jail. The facts are that they found him with a bed sheet around his neck, attempting suicide.

There is no evidence of delusions or hallucinations. He is in good contact with reality and there has been no psychotic behavior noted. He answers questions to the limit of his ability and knowledge.

## HISTORY OF PATIENT

(Doctor's Notes)

NAME OF INSTITUTION:

ROCHESTER STATE HOSPITAL

NAME OF PATIENT:

PUTMON, William

IDENTIFICATION NO.:

118 84 36

HOSPITAL NO.:

056 954

-2-

Psychological evaluation indicates that Mr. Putmon has some functional eye-hand coordination difficulties which somewhat interfere with his ability to interpret his environment, but do not impair it beyond the point where others can help him compensate for the loss. However, his abstract abilities appear quite adequate. No evidence of psychopathology was found, though Mr. Putmon was described as a person with a poorly differentiated and integrated self-structure.

There is no record of previous admissions to a mental institution.

As a result of our examination, we believe with reasonable medical certainty that this patient, at the time of examination, was not in such a state of insanity as not to be aware of the nature of the charges against him, to understand the proceedings, and to aid in his defense. He does not require further observation or treatment in this hospital and should be removed at any time.



MENTAL HEALTH SERVICES  
FOR COURTS AND PROBATION DEPARTMENTS  
Hall of Justice - Room N-140  
Civic Center Plaza  
Rochester, New York 14614

CONFIDENTIAL

July 16th, 1971

Judge of County Court  
Hall of Justice  
Civic Center Plaza  
Rochester, New York 14614

Re: William Putmon  
15 Hoeftzer St.  
Rochester, N.Y.  
D.O.B. 10/31/51  
Charge: Burgl. 3rd & P. L.

Honorable Sir:

Mr. William Putmon whom you referred to us is a 19 year old, black, single man who is charged with Burglary 3rd and Petit Larceny. He is currently incarcerated in Monroe County Jail where he was interviewed on 7/13/71. He was referred to us for the question of suicidal intent. Mr. Putmon was observed "seeing things" and threatening suicide by hanging.

Mr. Putmon was examined by Drs. Dyckin and Barry on 5/19/71 for a question of ability to stand trial. It was felt that he was a "confused and bewildered man who lacked clear understanding of the charges against him" and was judged incompetent to stand trial. At that time a strong question of paranoid schizophrenia was raised. Since that time Mr. Putmon has been incarcerated in a cell across from the guard's desk. He at times has observed pacing and talking to himself. The guards describe this as a tendency on the part of Mr. Putmon to talk to imaginary persons in the cell with him. On one occasion he asked the guards for a towel to complete a rope which he was fashioning out of his garments so that he could hang himself. At times he is complaining about "the evilness of the mind" which he says persecutes him. He is observed to eat and to sleep properly. During times when he is visited by relatives Mr. Putmon seems to be coherent and oriented.

When I examined Mr. Putmon he made complaints of not being able to sleep, not being able to eat and experiencing the walls in his cell as closing in on him. He states that he feels he is a dead man and that his mind is destroying him. He states that "the evilness of the mind is destroying him." He speaks about a person named Shorty who he carries on conversations with. Shorty is apparently an imaginary short creature with long pointed ears. In addition, Mr. Putmon states that he sees trees laughing at him. He describes them as big, wild trees with snakes around them. He states in addition that bats eat his brains up and they laugh at him saying "The evilness of the mind is destroying you." He states that the evilness of the mind has tormented him ever since his father died approximately 2 years ago. Mr. Putmon carries off this discussion in a dramatic, sensational way. Although the content of his speech is bizarre there is no dissociation to be noted. His story is logical and coherent. Some of his responses are literally crazier than crazy. For instance,

Judge of County Court

Re: William Putman

when I asked him if he has ever worked before he stated "Yes, I have, fighting the evilness of the mind," and when I asked him where he was born he states "A dead man ain't never been born." He demands of the writer that he do something to destroy the evilness of the mind or that he will destroy himself. Throughout the interview he demonstrated a good range of affect, did often glare at the writer in a rather bawdy way. At times when I tried to catch him on his story he would crack a smile and then very quickly catch himself and resume his dramatic air.

Diagnostic impression: I believe Mr. Putman could be suffering from a paranoid schizophrenia but feel that much of his current behavior is a clear manipulation to get himself out of jail. I feel at least at the present time he should remain in the cell across from the guard's office and watched closely. If he should make an attempt to commit suicide then he may have to be taken to a hospital. However, at the present time I do not consider him to be in such distress that hospitalization is warranted.

Sincerely

Donald W. Ferris, M.D.

David J. Barry, M.D.  
Director

DWF:lc  
cc: Probation Department



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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United States ex rel WILLIAM PUTMON

- vs -

CIVIL 1973-372.

ROBERT J. HENDERSON, Superintendent,  
Auburn Correctional Facility

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Petitioner pro se.

Bedros Odian  
Assistant Attorney General of New York  
65 Court Street  
Buffalo, N.Y. 14202  
Attorney for respondent

FINDINGS OF FACT

1. The petitioner is held on a judgment of the Supreme Court, Monroe County, entered October 20, 1971, following his guilty plea to the charge of attempted rape in the first degree, where he was represented by retained counsel. He was sentenced to a term of 4 to 12 years. He is presently confined at the Auburn Correctional Facility.

2. In this proceeding he claims that he was mentally incompetent and without sufficient ability to consult with his lawyer with reasonable degree of understanding of the proceedings against him at the time he pleaded guilty.

3. On January 3, 1973 he moved in the Supreme Court, Monroe County, to vacate the judgment of conviction on the ground that it was obtained in violation of his rights under the federal constitution. On April 5, 1973 that court denied his application without a hearing. The Appellate Division, Fourth Department, on May 16, 1973, denied permission to appeal. The New York Court of Appeals denied permission to appeal. These allegations regarding post-conviction remedies are set forth in his petition before this court.

4. By order Dated July 20, 1973 this court directed the respondent to produce for this court's examination the papers which were before the Supreme Court, Monroe County, on the denial of petitioner's motion to set aside the judgment of conviction, and the order of denial being dated April 5, 1973. The presence of the petitioner was not required on the return of the order of this court.

5. The respondent has produced for this court's examination the papers directed to be produced by the order of this court. The papers produced are sufficient to allow this court to determine the questions raised by the petitioner in this proceeding. There is no need for a further hearing.



6. On the evidence before me I find as follows:  
The plea of guilty entered before the Monroe County Court on October 19, 1971 was a valid plea of guilty entered voluntarily and without coercion and with full understanding of the consequences of the plea. The colloquy between the petitioner and the court showed that the petitioner had full understanding of the charge against him and of the circumstances surrounding the events which formed the basis of the charge against the petitioner. The petitioner at the time of the plea expressed his satisfaction with his attorney. The court pointed out to the petitioner that the record indicated that the court had access to the previous multiple psychiatric evaluations of the petitioner and that the court found that the petitioner was capable of understanding the charge against him, in cooperating in his defense and, further understanding the nature and consequences of the guilty plea. I find that the petitioner was not mentally incompetent, and that he had sufficient ability to consult with his lawyer with reasonable degree of understanding of the proceedings against him at the time he pleaded guilty. The judgment of conviction and sentence was not procured in violation of the petitioner's rights under the federal constitution.

There is no showing that the petitioner is entitled to the issuance of a writ of habeas corpus.

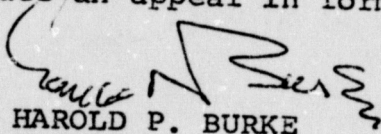
CONCLUSION OF LAW

1. Petitioner's application for a writ of habeas corpus is denied. SO ORDERED.

Certificate of probable cause is denied.

Permission to appeal in forma pauperis is also denied with the qualification that the petitioner may file with the Clerk of the United States District Court, United States Court House, Buffalo, New York, a notice of appeal without the payment of filing fees.

This denial does not prevent the petitioner from applying directly to the Court of Appeals for the Second Circuit, United States Court House, Foley Square, New York City, for a certificate of probable cause and for permission to prosecute an appeal in forma pauperis.

  
HAROLD P. BURKE  
United States District Judge

December 12, 1973.



Civ. 1975-312  
West. Dist.

PBO SE  
6/17/74  
74-8037

UNITED STATES COURT OF APPEALS

Second Circuit

FILED

At a Stated Term of the United States Court of Appeals, in and for the Second  
Circuit, held at the United States Court House, in the City of New York, on the  
twenty-first day of June, one thousand nine hundred  
and seventy-four.

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United States ex rel. William Putmon,  
Relator-Appellant,

v.

Robert J. Henderson, Superintendent,  
Respondent-Appellee.

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A motion having been made herein by relator pro se for a certificate of probable  
cause, for leave to proceed in forma pauperis, for transcription of the minutes at the  
expense of the United States, and for the assignment of counsel and for

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted to the extent that the case is remanded to the district court for a hearing to determine whether petitioner was competent at the time of his guilty plea. The district court is further directed to assign counsel for the purpose of presenting the issue to it.

WRM JJS Bartels

*Joseph Smith*  
J. Joseph Smith, U.S.C.J.

*Walter R. Mansfield*  
Walter R. Mansfield, U.S.D.J.

*John R. Bartels*  
John R. Bartels Circuit Judge  
U.S.D.J.

*A. Daniel Swaro* clerk  
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CERTIFICATE OF SERVICE

March 24 , 19 28

I certify that a copy of this brief and appendix  
has been mailed to the Attorney General of the State  
of New York.

Nathan J. Gelbermann